

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF ATTORNEY GENERAL
BY THOMAS W. CORBETT, JR., ATTORNEY GENERAL
Petitioner**

v.

NO.

M.D. 2006

**RICHMOND TOWNSHIP, and
RICHMOND TOWNSHIP BOARD
OF SUPERVISORS
Respondents**

**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR
DECLARATORY JUDGEMENT AND INJUNCTIVE RELIEF**

The Commonwealth of Pennsylvania, by the Attorney General, brings this Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief and alleges the following:

STATUTORY AUTHORITY

1. Petitioner brings this Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief pursuant to the “Declaratory Judgments Act”, 42 Pa.C.S. § 7531 et. seq.; Pennsylvania Rules of Civil Procedure, Rule 1602 et. seq. and 3 Pa.C.S. § 315.

JURISDICTION

2. The Court has jurisdiction of this Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief pursuant to 42 Pa.C.S. § 761, which provides jurisdiction over all civil actions or proceedings by the Commonwealth government, and 3 Pa.C.S. § 315, which provides jurisdiction over actions by the

Attorney General to invalidate and/or enjoin the enforcement of an unauthorized local ordinance.

PARTIES

3. Petitioner is the Pennsylvania Office of Attorney General, an agency of the Commonwealth of Pennsylvania, whose principal business address is Strawberry Square, Harrisburg, PA 17120. Pursuant to 3 Pa.C.S. §§ 314 and 315, the Attorney General is authorized to review local ordinances and to bring actions against local government units to invalidate and/or enjoin the enforcement of unauthorized local ordinances.

4. Respondent Richmond Township Board of Supervisors is the duly elected governing body of Respondent Richmond Township, a municipal corporation and township of the second class, with offices at 11 Kehl Drive, Fleetwood, Pennsylvania, 19522.

FACTS

5. Respondent Richmond Township is a political subdivision of the Commonwealth of Pennsylvania within which an Agricultural Security Area has been created pursuant to 3 P.S. § 911.

6. On or about August 14, 2000, Richmond Township adopted Ordinance Number 81-2000 (“Ordinance”). A copy of the Ordinance is attached as Exhibit A.

7. Section 201.4 of the Ordinance defines “Intensive Agriculture” as specialized agricultural activities including but not limited to, mushroom production, poultry production, and dry lot livestock production, which due to the intensity of production, necessitate development of specialized sanitary facilities and control.

8. Section 804.7 of the Ordinance states that intensive agricultural activities include, but are not limited to, mushroom farms, poultry and egg production, and dry lot farms, wherein the character of the activity involves a more intense use of the land than found in normal farming operations.

9. Section 804.7.a of the Ordinance states that intensive agricultural activities shall not be located within one thousand five hundred feet of another zoning district or existing residence located within the Agriculture or any other zoning district.

10. Section 804.7.c of the Ordinance prohibits commercial composting and states further that any on-site composting shall be limited for use on the premises on which such composting is made and produced.

11. Section 804.7.d requires solid and liquid wastes to be disposed of daily in a manner to avoid creating insect or rodent problems, or a public nuisance and provides that no emission of noxious, unpleasant gases shall be permitted in such quantities as to be offensive outside the lot lines of the tract occupied by an intensive agricultural user.

12. On or about November 3, 2005, the operator of a normal agricultural operation in Richmond Township requested that the Attorney General review the Ordinance pursuant to 3 Pa. C.S. § 314. A copy of the request is attached as Exhibit B.

COUNT I

VIOLATION OF 3 Pa.C.S. § 313

13. Petitioner incorporates paragraphs 1 through 12 as if fully set forth.

14. 3 Pa. C.S. § 312 defines an unlawful local ordinance as an ordinance enacted or enforced by a local government unit which prohibits or limits a normal agricultural operation unless the local government: (1) has expressed or implied authority

under State law to adopt the ordinance; and (2) is not prohibited or preempted under State law from adopting the ordinance.

15. 3 Pa C.S. § 313 prohibits a local government unit from adopting or enforcing an unauthorized local ordinance.

16. 3 P.S. § 952 defines a normal agricultural operation as the activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock, and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is: (1) not less than ten contiguous acres in area: or (2) less than ten contiguous acres in area but has anticipated yearly gross income of at least \$10,000. The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the act of December 12, 1994 (P.L. 944, No. 134) known as the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.

17. “Intensive Agriculture”, as defined in Sections 201.4 and 804.7 of the Ordinance, is a normal agricultural operation as defined in 3 P.S. § 952.

18. Richmond Township has no express or implied authority to define, differentiate or regulate “Intensive Agriculture”.

19. Richmond Township's definition of "Intensive Agriculture" is arbitrary, vague and unreasonable, and invites discriminatory enforcement.

20. The restrictions imposed by Section 804.7.a, c. and d. of the Ordinance are preempted by State law.

21. The restrictions imposed by Section 804.7 are prohibited by the agricultural protections set forth in the Right to Farm Law, 3 P.S. 952, the Municipalities Planning Code, 53 P.S. § 10603, and the Agricultural Area Security Law, 3 P.S. § 912.

22. Section 804. 7 of the Ordinance prohibits or limits a normal agricultural operation in violation of 3 Pa C.S. § 313.

COUNT II

VIOLATION OF THE NUTRIENT MANGEMENT ACT,

3 Pa C.S. § 501

23. Petitioner incorporates paragraphs 1 through 22 as if fully set forth.

24. The Nutrient Management Act (NMA) occupies the whole field of regulation regarding nutrient management and odor management to the exclusion of all local regulation.

25. The NMA provides that no ordinance or regulation of any political subdivision may prohibit or in any way regulate practices related to the storage, handling, land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

26. The requirement of a 1,500 foot setback for intensive agriculture under Section 804.7.a of the Ordinance is preempted by the NMA and is arbitrary, unreasonable and not substantially related to the health, safety, morality and general welfare of the community.

27. The setback provisions of Section 804.7.a of the Ordinance conflict with and are more stringent than, the various 100, 200, and 300 foot setback requirements of the NMA regulations, 25 Pa. Code § 83.351.

28. The prohibition of commercial composting and limitations of any on-site composting for use on the premises on which such composting is made and produced contained in Section 804.7.c. of the Ordinance conflicts with and is more stringent than NMA regulations concerning use of composted material.

29. The NMA preempts the regulation of composting under Section 804.7.c of the Ordinance

30. Section 804.7.d of the Ordinance requires solid and liquid wastes to be disposed of daily and is in direct conflict with the NMA, which regulates removal on a more seasonal basis.

31. Section 804.7.d imposes more stringent requirements for disposal of solid and liquid wastes than, and is preempted by, the NMA.

COUNT III

VIOLATION OF THE DOMESTIC ANIMALS LAW,

3 Pa C.S. § 2301

32. Petitioner incorporates paragraphs 1 through 31 as if fully set forth.

33. Section 2352 of the Domestic Animal Law sets forth the permissible methods under state law for disposal of dead domestic animals and animal waste.

34. Section 2389 of the Domestic Animal Law provides that the Law preempts ordinances, resolutions and regulations of political subdivisions which pertain to the procedure for disposal of dead domestic animals and domestic animal waste.

35. The limitations on composting contained in Section 804.7.c of the Ordinance are preempted under Section 2389 of the Domestic Animals Law.

COUNT IV

VIOLATION OF THE MUNICIPALITIES PLANNING CODE,

53 P.S. § 10603(h)

36. Petitioner incorporates paragraphs 1 through 35 as if fully set forth.

37. The Municipalities Planning Code (MPC) provides that zoning ordinances shall encourage the continuity, development and viability of agricultural operations. Further, the MPC states that zoning ordinances may not restrict agricultural operations or changes to or expansions of agricultural operations in geographic areas where agriculture has traditionally been present unless the agricultural operation will have a direct effect on the public health and safety.

38. Section 804.7 of the Ordinance restricts agricultural operations in violation of the MPC.

COUNT V

VIOLATION OF THE AGRICULTURAL AREA SECURITY LAW,

3 P.S. § 911

39. Petitioner incorporates paragraphs 1 through 38 as if fully set forth.

40. The Agricultural Area Security Law (AASL) provides that every municipality or political subdivision within which an agricultural security area is created shall encourage the continuity, development and viability of agriculture within such an area by not enacting local laws or ordinances which would unreasonably restrict farm structures or farm practices within the area in contravention of the purposes of this act unless such restrictions or regulations bear a direct relationship to the public health or safety.

41. Section 804.7 of the Ordinance unreasonably restricts farm structures and farm practices in violation of the AASL.

COUNT VI

VIOLATION OF THE RIGHT TO FARM LAW,

3 P.S. § 953

42. Petitioner incorporates paragraphs 1 through 41 as if fully set forth.

43. The Right to Farm Law provides that every municipality shall encourage the continuity, development and viability of agricultural operations within its jurisdiction. Every municipality that defines or prohibits a public nuisance shall exclude from the definition of such nuisance any agricultural operation conducted in accordance with normal agricultural operations so long as the agricultural operation does not have a direct adverse effect on the public health and safety.

44. Section 804.7.d violates the Right to Farm Law by requiring daily disposal of solid and liquid wastes in a manner to avoid a public nuisance.

WHEREFORE, Petitioner prays that the Court grant the following relief:

- (a) declare Section 804.7 of Richmond Township Ordinance Number 81 of 2000 null and void;
- (b) enjoin Richmond Township from enforcing Section 804.7 of Ordinance Number 81 of 2000; and
- (c) grant such other relief as it may deem just and proper under the circumstances.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: _____

Michael T. Killion
Deputy Attorney General
Attorney ID # 201923

Gregory R. Neuhauser
Senior Deputy Attorney General
Attorney ID # 31485

Susan J. Forney
Chief Deputy Attorney General
Attorney ID # 27744

Office of Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 705-2331

Date: June 29, 2006

VERIFICATION

I, LOUIS J. ROVELLI, verify that the statements contained in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that false statements are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

LOUIS J. ROVELLI

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NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Legal Referral Service
Berks County Bar Association
544-546 Court Street
P.O. Box 1058
Reading, PA 19603
(215) 375-4591

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CERTIFICATE OF SERVICE

I, Michael T. Killion, Esquire, hereby certify that service of a true and correct copy of the enclosed Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief was delivered in person to:

Richmond Township Board of Supervisors
11 Kehl Drive
Fleetwood, Pennsylvania 19522

**MICHAEL T. KILLION
DEPUTY ATTORNEY GENERAL**